

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>	Hearing Date/Agenda Number 07/10/02 Item 3.c.
	File Number V02-009
	Application Type Appeal of Director's Decision to Approve Fence Variance
	Council District 6
	Planning Area Willow Glen
	Assessor's Parcel Number(s) 446-07-003

PROJECT DESCRIPTION	Completed by: AA	
Location: Southwestern corner of Dry Creek Road and Sycamore Glen (1734 Dry Creek Road)		
Gross Acreage: 0.45	Net Acreage: 0.45	Net Density: 5 units per acre
Existing Zoning: R-1-5 Residential	Existing Use: Residential	
Proposed Zoning: R-1-5 Residential	Proposed Use: To allow a fence with a maximum height of six feet set back 12 feet 6 inches from the western property line adjacent to Sycamore Glen.	

GENERAL PLAN	Completed by: AA
Land Use/Transportation Diagram Designation Low Density Residential (8 DU/AC)	Project Conformance: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING	Completed by: AA
North: Single-family residential	R-1-2 Residential
East: Single-family residential	R-1-5 Residential
South: Single-family residential	R-1-5 Residential
West: Single-family residential	R-1-5 Residential

ENVIRONMENTAL STATUS	Completed by: AA
<input type="checkbox"/> Environmental Impact Report found complete <input type="checkbox"/> Reuse of Negative Declaration	<input checked="" type="checkbox"/> Exempt <input type="checkbox"/> Environmental Review Incomplete

FILE HISTORY	Completed by: AA
Annexation Title: Meridian No. 56	Date: 07/08/77

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION		
<input type="checkbox"/> Approval <input checked="" type="checkbox"/> Uphold Director's Decision to Approve	Date:	Approved by: _____ <input type="checkbox"/> Action <input type="checkbox"/> Recommendation

APPLICANT	DEVELOPER/OWNER
Irving Tamura PO Box 913 Morgan Hill, CA 95037	Pat and Becky Dimanto 1734 Dry Creek Road San Jose, CA 95125

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: AA

Department of Public Works

None received.

Other Departments and Agencies

See attached memoranda from Department of Transportation dated June 10, 2002 and June 25, 2002.

See attached correspondence from Irving Tamura dated June 20, 2002; Higgins Associates traffic report dated June 20, 2002; Barrie D. Coate and Associates arborist report dated June 11, 2002; Los Gatos Horticulture arborist. Report dated June 7, 2002; Neil Najibi dated May 21, 2002; Irving Tamura dated March 12, 2002; Neil Najibi undated; Douglas and Winifred Cooper received May 8, 2002; petition received May 8, 2002; John Sternitzky dated May 7, 2002; Claire Brinard dated May 7, 2002; Mildred and Jim McBrien dated May 6, 2002; Constance Gunn dated May 5, 2002; Shirley Gilman dated May 2, 2002; Robert and Nancy Bernal dated May 2, 2002; Nancy and Ross Woodard dated May 7, 2002; Don and Carolyn Clendenning dated May 2, 2002; Lorraine and Richard Harrison and associated Sycamore Glen marketing material; Larry Stites dated May 3, 2002; Janice Gochbauer dated June 27, 2002.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, Irving Tamura, is requesting a Fence Variance to allow a six-foot tall fence set back 12 feet six inches from the western property line, within the 25-foot setback area. In response to concerns expressed by the appellants, particularly regarding their concern over the lost views of existing ordinance-size sycamore trees within the yard, the applicant has revised the proposal to eliminate the 6-foot fence in front of the two sycamore trees. In its place at that location, a three-foot decorative dry stack stone wall is proposed to flare out in a semi-circle to the east towards Sycamore Glen to enclose the yard. An existing driveway accessed from Sycamore Glen will be removed and the two access driveways and the front entry to the residence on Dry Creek Road will remain. Two sycamore trees located on a small elevated mound on the property will be enclosed within the fenced yard, behind the 3-foot section of fence.

A number of trees are located on the property including ordinance-size sycamore trees. None of the trees on the property are City-designated heritage trees. The fence variance application does not approve removal of any trees. The applicant also proposes to work with the City Arborist to plant an additional five sycamore trees in the public right-of-way on Sycamore Glen.

The existing zoning is R-1-5 Residence District which allows fences on single-family residential properties that vary in height from a maximum of three feet to a maximum of seven feet depending on the location of the fence relative to the property line. The parcel is bounded by single-family residential uses to the north, south, east, and west.

On March 18, 2002 the applicant filed a fence variance application to increase the height of the fence in the 25-foot front yard setback area adjacent to Sycamore Glen. A Director's Hearing was held on May 8, 2002 and the Director of Planning made the required findings to approve the Fence Variance. Subsequently

appeals of the Director's Decision were filed on May 16, 2002 by Neil Najibi and on May 17, 2002 by Marissa Weinstock. The subject fence variance proposal has since been significantly modified to address the appellants' concerns.

GENERAL PLAN CONFORMANCE

The proposed fence variance on this single-family lot conforms to the General Plan designation for this property of *Low Density Residential* (5DU/AC).

ENVIRONMENTAL REVIEW

Under the provisions of Section 15303(e) of CEQA this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.

PUBLIC OUTREACH

Hearing notices were mailed to property owners and tenants within 300 feet of the subject property for the May 8, 2002 Director's Hearing in conformance with the Public Outreach Policy. A number of residents spoke in opposition to the project and indicated that residences within 300 feet of the subject site may not have received a hearing notice. In response to the two appeals, hearing notices were mailed to property owners and tenants within 1,000 feet for the July 10, 2002, Planning Commission Hearing and the two appellants were faxed individual hearing notices. Staff has attached correspondence received from the public. Staff has been available to discuss the project with members of the public.

ANALYSIS

The strict application of the requirements and regulations prescribed in Section 20.30.600 of this Title would require that fencing in the front 25-foot setback be a maximum height of three feet. The applicant is proposing to vary the strict application of Section 20.30.600 to the project site in the following respects: The applicant is proposing a fence in the front setback adjacent to Sycamore Glen, as defined in Title 20, that ranges in height from three feet to six feet.

Fence Variance findings in Section 20.100.1320B.1 states that special circumstances to be considered under the Fence Variance subsection include the fact that the legal front lot line of the lot does not serve as the actual front entry into the residence. In the case of the subject property, the legal front lot line on Sycamore Glen, the narrower of the lot's two frontages, does not serve as the actual front entry into the residence and therefore meets the requirements for a fence variance. The subject house front entry is accessed from Dry Creek Road.

The fence proposal was evaluated by the City's Department of Transportation (DOT). DOT staff stated that the fence should not create a sight obstruction for either inbound or outbound traffic at the intersection of Dry Creek Road and Sycamore Glen, and that the removal of the existing driveway access on Sycamore Glen will reduce the potential for conflicts at the intersection (see attached memorandum).

The arborist report by Barrie Coate evaluates the modified fence design which ranges in height from three feet to six feet. The report concludes that provided there are no soil cuts of more than 12 inches of depth no closer than 10 feet from either of the subject sycamores and the fence is constructed of pier and grade beam design, there is no reason to be concerned about the health or safety of or any negative effect on the adjacent sycamores. The City Arborist concurs with the report by Barrie Coate (see attached memorandum).

The proposed portion of the six-foot tall fence will be set back a minimum of 12.6 feet from the property line on Sycamore Glen and a three-foot dry stack wall is proposed to enclose the sycamore trees. The low three-foot wall complies with Title 20 and will preserve views of the mature sycamore trees of concern to members of the adjacent neighborhood. The proposed 12.6 foot setback area adjacent to Sycamore Glen is adequate for landscaping and will not impair vehicular line of views at the corner of Sycamore Glen and Dry Creek Road and will not negatively impact the existing sycamores. The remainder of the proposed six-foot fence adjacent to Dry Creek Road is in conformance with the required 25-foot front yard setback area for fences greater in height than three feet.

Conclusion

Based on the above analysis, staff concludes that the proposed Fence Variance is in conformance with the Zoning Code because the proposed fence will preserve the ordinance size sycamore trees and will not create a sight obstruction for either inbound or outbound traffic at the intersection of Dry Creek Road and Sycamore Glen. Further, the removal of an existing driveway access on Sycamore Glen will reduce potential vehicular conflicts at that location.

RECOMMENDATION

Planning Staff recommends the Planning Commission uphold the Director's decision to approve the Fence Variance and include the following findings and conditions in its resolution.

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. The project site has a designation of Low Density Residential (5 DU/AC) on the adopted *San José 2020 General Plan Land Use/Transportation Diagram*.
2. The project site at 1734 Dry Creek Road is located in the R-1-5 Residential Zoning District.
3. The subject site is 19,603 square feet in size and meets the minimum lot size requirements.
4. Under the provisions of Section 15303(e) of CEQA this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
5. The parcel is bounded by residential uses to the north, east, south and west.
6. The strict application of the requirements and regulations prescribed in Section 20.30.600 of this

Title would require that fencing in the front setback be a maximum height of three feet.

7. The applicant is proposing to vary the strict application of Section 20.30.600 to the project site in the following respects: The applicant is proposing a fence in the front setback adjacent to Sycamore Glen, as defined in Title 20, that ranges in height from three feet to six feet.
8. Fence Variance findings in Section 20.100.1320B.1 state that special circumstances to be considered under the Fence Variance subsection include the fact that the legal front lot line of the lot does not serve as the actual front entry into the residence. In the case of the subject property, the legal front lot line on Sycamore Glen, the narrower of the lot's two frontages, does not serve as the actual front entry into the residence and therefore meets the requirements for a fence variance. The subject house front entry is accessed from Dry Creek Road.
9. The portion of the fence that is six feet in height will be set back a minimum of 12.5 feet from the property line on Sycamore Glen. The proposed fence is in conformance with the required 25-foot front yard setback area adjacent to Dry Creek Road for fences greater in height than three feet.
10. The proposed 12.5 setback area adjacent to Sycamore Glen is adequate for landscaping and will not impair vehicular line of views at the corner of Sycamore Glen and Dry Creek Road.
11. An existing driveway accessed from Sycamore Glen will be removed. The two access driveways on Dry Creek Road will remain.

The Planning Commission concludes and finds, based on the analysis of the above facts, that:

1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety, or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in the Title, or as is otherwise required in order to integrate the use, as conditioned in this Permit, with existing and planned uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind of quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and

- b. By other public or private service facilities as are required.
- 4. Because of special circumstances uniquely applicable to the subject property, including, but not limited to, size, shape, topography, location or surroundings, but expressly excluding any consideration of the personal circumstances of the petitioner or of any changes in the size or shape of the subject property made or occurring while the subject property was situate in the zoning district in which it is situate at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in Chapter 20.100.1320 deprives such property of privileges enjoyed by other property in the vicinity of and in same zoning district as the subject property. Specifically, Section 20.100.1320B.1 states that special circumstances to be considered under the Fence Variance subsection include the fact that the legal front lot line of the lot does not serve as the actual front entry into the residence, which applies in that: the property's legal front lot line on Sycamore Glen does not serve as the actual front entry into the residence which is locate don Dry Creek Road.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

- 1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
- 2. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
- 3. **Deadline for Commencing Construction.** This Fence Variance shall automatically expire two years from and after the date of issuance hereof by said Director if within such two-year period construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Fence Variance. The date of issuance is the date this permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
- 4. **Revocation.** This Fence Variance is subject to revocation for violation of any of its provisions or conditions.
- 5. **Conformance with Municipal Code.** No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.

6. **Acceptance.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of City Planning and Building within **60 days from the date of issuance of the permit. Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.**
 7. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
 8. **Conformance with Plans.** Construction and development shall conform to approved Fence Variance plans entitled, DiManto Residence dated June 20, 2002 on file with the Department of Planning, Building and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
- c: Building Division (2)
Engineering Services
Marissa Weinstock, 1957 Sycamore Glen, San Jose, CA 95125
Neil Najibi, 1950 Dorrance Court, San Jose, CA 95125